Supreme Court, U.S.
FILED
DEC 15 1999
CLERK

(2)

No. 99-833

In The
Supreme Court of the United States

PATRICK DAIN,

Petitioner,

vs.

COUNTY OF VENTURA; RONALD KOMERS, as an individual and as former Personnel Director of the County of Ventura; BARBARA JOURNET, as an individual and as Personnel Director of the County of Ventura; and DOES 1-10, inclusive,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In accordance with Rule 15-1, respondents County of Ventura, Ronald Komers, and Barbara Journet file the following brief in opposition to the petition for writ of certiorari.

INTRODUCTION

The argument made by petitioner — that it is impermissible for his employer to require the use of a Social Security number — has been thoroughly briefed and rejected by the Ventura County Superior Court, the California Court of Appeal, and the California Supreme Court, as a result of which the petition is objected to on jurisdictional grounds. Secondly, every appellate decision which has considered the issue has rejected religious challenge to required submission and use of a Social Security number.

On October 18, 1999, petitioner (as a civil plaintiff) filed, in essence, the same set of allegations which he makes in this petition in a United States District Court action (CV 99-06325 GHK (RNBx)). That action was filed by petitioner/plaintiff in the United States District Court for the Central District of California. The defendants in that lawsuit, in essence the respondents in this lawsuit, responded with a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), filed and served on November 8, 1999. It has not yet been ruled upon.

I.

EVERY APPELLATE DECISION TO CONSIDER THE ISSUE HAS REJECTED FIRST AMENDMENT AND OTHER CHALLENGES TO REQUIRED SUBMISSION AND UTILIZATION OF A SOCIAL SECURITY NUMBER.

Petitioner's argument is anything but novel; rather, it constitutes familiar terrain over which the courts of this nation have now passed on numerous occasions. The United States Supreme Court has rejected such an argument. In *Bowen v. Roy*, 476 U.S. 693, 699-701 (1986), this Court held that a statutory requirement that a state agency utilize Social Security numbers in administering benefit programs there in question did not violate the free exercise clause. The government's use of a Social Security number for plaintiff's child was held by the *Bowen* court not to impair in any way appellees' freedom to exercise their religion. The Court stated at 700:

> Roy may no more prevail on his religious objection to the Government's use of a Social Security number for his daughter than he could on a sincere religious objection to the size or color of the Government's filing cabinets.

While the size or color of the government's filing cabinets might offend a citizen's religious beliefs, that is neither a widely held nor generally accepted belief, nor is it an affirmative requirement compelling the plaintiff to do something or to refrain from doing something. There is no

generally accepted component of any religious faith which supports the plaintiff's unique belief. The *Bowen* court also stated:

> Our cases have long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute. This case implicates only the latter concern. Roy objects to the statutory requirement that state agencies "shall utilize" Social Security numbers not because it places any restriction on what he may believe or what he may do, but because he believes the use of the number may harm his daughter's spirit.
>
> Never to our knowledge has the Court interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens.

476 U.S. at 699.

The Court has held that governmental requirements tangentially impinging upon a unique religious opinion are not subject to the strict scrutiny test. The Court has stated that it will not employ any strict scrutiny test to religious freedom assertions based upon Social Security number use except in the unemployment compensation context. The Court stated:

> In recent years we have abstained from applying the *Sherbert* test (outside the unemployment compensation field) at all. In *Bowen v. Roy* [citation], we declined to apply *Sherbert* analysis to a federal statutory scheme that required benefit applicants and recipients to provide their Social Security numbers. The plaintiffs in that case asserted that it would violate their religious beliefs to obtain and provide a Social Security number for their daughter. We held the statute's application to the plaintiffs valid regardless of whether it was necessary to effectuate a compelling interest.

Employment Division etc. v. Smith, 494 U.S. 872, 883 (1990).

In the years since *Bowen* and *Smith* were decided, every court to consider the issue or a similar issue has held to the same effect. The Ninth Circuit has recently addressed the subject on three occasions. In *Dittman v. State of California*, 191 F.3d 1020 (9th Cir. 1999), the Ninth Circuit held that a state licensing board may require disclosure of Social Security numbers as a condition of renewal. In *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826 (9th Cir. 1999), the Ninth

Circuit held that an employee's federal constitutional rights are not violated when a private employer requires a Social Security number as a hiring condition. In *Ferm v. United States Trustee*, 194 F.3d 954 (9th Cir. 1999), the Ninth Circuit held that a fine imposed against a non-attorney bankruptcy petition preparer for not disclosing his Social Security number did not violate the preparer's constitutional or privacy rights.

The State of California, Court of Appeal, has exhaustively treated the subject and come to the same conclusion. In *Brunson v. Department of Motor Vehicles*, 72 Cal.App.4th 1251 (2d Dist. 1999), the Court of Appeal held that the test to be applied in cases challenging neutral laws of general application on free exercise grounds is the rational basis test. The issue is whether the challenged requirement or governmental action, neutral and uniform in application, is a reasonable means of promoting a legitimate public interest. California Vehicle Code Sections 1653.5 and 12800, which mandate the provision of an applicant's Social Security number, meet the rational basis test. It is a religion-neutral law of general applicability. Although it may incidentally burden some religious practices, it does not offend the free exercise clause of either the United States Constitution or the California State Constitution, Article I, Section 4, so long as it is a rational means of achieving a legitimate governmental end.

Based upon *Bowen, Smith, Dittman, Sutton, Ferm*, and *Brunson*, there is no basis for believing that there is the remotest possibility of petitioner's position being accepted. The rule that an employer may require an employee to provide a Social Security number has been repeatedly upheld on the federal and state levels by all courts which have considered the issue. Not only is the number needed for identification so as to ferret out fraud, federal law requires that employers in the United States must use Social Security numbers for tax

information reporting purposes. See Internal Revenue Code, 26 U.S.C. §6109(d), which is entitled "Requirement of Use of Social Security Number."

II.

THE JURISDICTIONAL BASIS FOR THE POSITION IS LACKING.

It has been held that federal courts have no appellate jurisdiction over state court judgments in connection with modifying or vacating them. *Branson v. Nott*, 62 F.3d 287 (9th Cir. 1995). The Tenth Circuit has held that a plaintiff's suit on equal protection and due process grounds alleging discriminatory practices in awarding custody to mothers over fathers in child custody disputes was not something over which the federal courts would have subject matter jurisdiction. *Anderson v. State of Colorado*, 793 F.2d 262, 264 (10th Cir. 1986). To the same effect is *Keene Corp. v. Cass*, 908 F.2d 293 (8th Cir. 1990) [rejecting plaintiff's attempt to have the federal court rule that a state court order was unenforceable because it violated the due process and supremacy clauses]. The well-settled rule is that a plaintiff may not seek a reversal of a state court judgment simply by recasting his complaint in the form of a federal civil rights action. *Hagerty v. Succession of Clement*, 749 F.2d 217 (5th Cir. 1984).

In the present case, the issues raised have been thoroughly considered under the nuances of state law — the California Government Code and the California Information Practices Act (Civ. Code §1798.3(b)(4), defining local agencies) — and judgment has finally been entered against the plaintiff, the State Supreme Court having denied a petition for review. The issues have been thoroughly briefed and argued at all levels (see appendices to petitioner's petition).

III.

THE PETITIONER'S RELIANCE UPON INTERNATIONAL TREATIES IS UNAVAILING.

The petitioner relies upon international treaties protecting religious freedoms. But there is no reported case of a court in the United States ever recognizing a cause of action under *jus cogens* norms of international law for acts committed by government officials against a citizen of the United States. All cases finding a cognizable right under *jus cogens* involved either acts committed on a foreign citizen or acts committed by a foreign sovereign. See, for example, *White v. Paulson*, 997 F.Supp. 1380, 1381 (E.D. Wash. 1998); *Hawkins v. Comparet-Cassani*, 33 F.Supp.2d 1244, 1255 (C.D. Cal. 1999).

While federal courts may imply a private right of action for violation of *jus cogens*, federal courts do not automatically recognize a cause of action springing from those documents any time there is a federally protected right which does not have an express remedy. *Schweiker v. Chilicky*, 487 U.S. 412, 414 (1988). Instead, federal courts must consider whether there exist special factors counseling hesitation in the absence of affirmative action by Congress. Federal courts are hesitant to interfere in an area which is traditionally entrusted to the legislative and executive branches, and this Court has stated that a treaty is enforceable in this country only if it is self-executing or if the legislature passes legislation implementing the provisions of the treaty. *Foster v. Neilson*, 27 U.S. 253, 314 (1829). The Ninth Circuit has developed a four-part test to determine when a treaty is self-executing. *Islamic Republic of Iran v. Boeing*, 771 F.2d 1279, 1283 (9th Cir. 1985). The treaties relied upon by the petitioner are not self-executing, and there is no indication that Congress has enacted implementing legislation which would cause these international covenants to

supersede extant federal appellate authority. Because these treaties do not create any private right of action under which a plaintiff may bring suit or successfully state a federal claim, they must be rejected as a basis for relief and jurisdiction. International treaties have generally been rejected as a basis for a federal action. *Igartua de la Rosa v. United States*, 32 F.3d 8, 10 (5th Cir. 1994); *In re Extradition of Chung*, 968 F.Supp. 791, 803 (D.C. Conn. 1997).

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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